

# Exhibit 108



Making San Francisco Bay Better

December 23, 2003

Kent Mitchell, Esq.  
Mitchell and Herzog  
550 Hamilton Avenue, Suite 230  
Palo Alto, California 94301-2030

SUBJECT: BCDC Permit No. 2-02,  
Mark Sanders (Westpoint Marina)

Dear Mr. Mitchell:

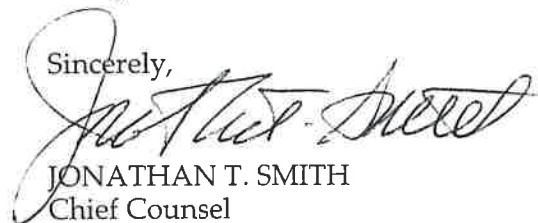
I am responding to your letter to me dated December 18, 2003. I have cleaned up Exhibit B, which is a copy of the permit.

I also continue to believe that we need a detailed legal description of the area being restricted for public access and described in Exhibit C. I have enclosed a copy of California Government Code Section 27281.5, which requires that the area being restricted be "specifically set forth" and "particularly" described. I would also note that permit does not require any of the actual float areas be restricted for public access. It therefore should not be particularly difficult to prepare a detailed legal description of the area required for public access.

I shall retain the original public access and open space agreement here. When I receive the legal description to add to Exhibit C, I shall do so, have Will Travis execute the document, and return it to you for recordation.

Thank you for your cooperation. If you want to discuss this further, please feel free to contact me either by direct dial telephone at 415-352-3655 or by email at [jons@bcdC.ca.gov](mailto:jons@bcdC.ca.gov).

Sincerely,



JONATHAN T. SMITH  
Chief Counsel

Encl.

**§ 27281.5. Recordation of restriction imposed by governmental entity on real property**

(a) Any restriction imposed upon real property on or after January 1, 1982, which restricts either the ability of the owner of real property to convey the real property or the owner of a proprietary leasehold interest to convey such interest and which is imposed by a municipal or governmental entity on real property or a proprietary leasehold interest which is not owned by the municipal or governmental entity, shall be specifically set forth in a recorded document which particularly describes the real property restricted in order to impart constructive notice of the restriction, or shall be referenced in a recorded document which particularly describes the real property restricted and which refers by page and book number to a separately recorded document in which the restriction is set forth in full.

(b) Any restriction on the ability of a person to convey real property which is subject to subdivision (a) shall be valid and enforceable only when the requirements contained in subdivision (a) have been met.

(c) Nothing in this section shall be construed, either directly or by implication, to enhance, diminish, or authorize any municipal or governmental entity to impose a restriction on the ability of a person to convey real property or a proprietary leasehold interest.

Added Stats 1981 ch 663 § 1.

**Collateral References:**

Miller & Starr, Cal Real Estate 3d §§ 1.9:38, 11:6, 24:15.

**Law Review Articles:**

Review of 1981 Legislation. 13 Pacific LJ 755.

**NOTES OF DECISIONS**

**1. Conditional Use Permit**

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In an action against a land title company by a partnership that purchased an apartment building and thereafter learned of a conditional use permit restricting use of the property to senior citizen housing, which permit defendant allegedly failed to include in the abstract of title, plaintiff stated a cause of action for negligent preparation of the abstract of title. The permit should have been reported in the abstract of title because Gov. Code, § 27281.5, required the recording of the permit and made the effect of such recording constructive notice. Although the permit did

not expressly impose any restrictions upon the process of selling or leasing, it unquestionably restricted the ability of the owner to convey the real property within the meaning of § 27281.5 because it limited the use of the property. Since that statute applies both to restrictions on an owner's ability to convey real property and to restrictions on an owner's ability to convey a proprietary leasehold interest, it was clearly applicable to the property in question, even if the property was an ordinary apartment building, not a cooperative one. 1119 Delaware v Continental Land Title Co. (1993, 2nd Dist) 16 Cal App 4th 992, 20 Cal Rptr 2d 438.

**§ 27282. Documents recorded without acknowledgments, certificates of acknowledgment, or further proof; Constructive notice**

(a) The following documents may be recorded without acknowledgment, certificate of acknowledgment, or further proof: